

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>TINA WEBB</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>VENATOR GROUP</b>	)	
Respondent	)	Docket No. 261,632
	)	
AND	)	
	)	
<b>LUMBERMEN'S MUTUAL CASUALTY CO)</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent requested review of the November 21, 2003 Award by Administrative Law Judge (ALJ) Bryce D. Benedict. The Board heard oral argument on April 27, 2004.

**APPEARANCES**

Jeff K. Cooper, of Topeka, Kansas, appeared for the claimant. Michelle Daum Haskins, of Kansas City, Missouri, appeared for respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Appeals Board (Board) has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

The ALJ concluded claimant sustained a compensable bilateral foot injury that resulted in a permanent whole body impairment. As a result, he awarded an 8 percent functional impairment as well as a 68.5 percent work disability.

The only issue appealed by respondent is nature and extent of claimant's disability. The respondent contends claimant sustained an injury to only her left foot while working, and as such, her recovery is limited to the 17 percent permanent partial impairment to the left lower extremity assigned by Dr. Greg Horton, one of her treating physicians. Respondent denies claimant sustained a permanent impairment to her right lower extremity while in its employ and is therefore not entitled to work disability benefits.

Claimant maintains the ALJ's Award should be affirmed in all respects. Claimant's initial injury to her left foot required her to utilize crutches and place all of her weight on her right foot. Thus, the condition in her right lower extremity is the natural and probable result of her initial compensable injury. Therefore, she is not only entitled to the 8 percent functional impairment, but to a 68.5 percent work disability as well.

Other than the issue of nature and extent of claimant's impairment, including work disability, both parties agreed all other issues were waived for purposes of this appeal.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant was employed by respondent as an order filler. This job required her to stand on her feet on a concrete floor during her entire shift at least five days a week. In August 2000 claimant began to experience a numbness and swelling in her left foot. There is no dispute that claimant suffered a stress fracture of the second metacarpal of her left foot as a result of her work duties with respondent. This injury occurred over a period of time culminating on October 19, 2000, the date she was initially taken off work and diagnosed with possible Reflex Sympathy Dystrophy (RSD).

During her initial treatment with Dr. Brian Ware, a podiatrist, there is no mention of right foot problems. She was, however, placed in a non-weight bearing splint and provided with crutches. According to claimant, once she began to use the crutches and bear all her weight on the right lower extremity, she began to notice pain.

Claimant was also provided with physical therapy during this period. According to claimant, she told the physical therapist of her right foot complaints.<sup>1</sup> This evidence is uncontroverted.

When her complaints did not resolve, Dr. Ware referred her to Dr. Nanda Kumar, a neurologist, for an evaluation. Dr. Kumar reviewed claimant's history of symptoms and

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<sup>1</sup> R.H. Trans. at 15.

noted claimant's complaints of a "burning sensation over the sole of both feet" with the left foot being worse.<sup>2</sup> This notation is made November 29, 2000.

Respondent then referred claimant to Dr. Greg Horton for an evaluation. Dr. Horton saw claimant for the first time on November 30, 2000. He noted claimant's complaints of burning pain in her contralateral (right) foot after he asked her to walk for him during the physical examination. He further noted that the right foot "hadn't really given her problems."<sup>3</sup> This is the first notation in this doctor's records regarding the right foot, although claimant clearly testified that once she was on the crutches, her right foot began to hurt as that extremity was bearing all of her weight.<sup>4</sup>

Dr. Horton ruled out RSD and although her symptoms were somewhat unusual, he concluded she likely sustained a stress fracture in the left foot. He took claimant off the crutches and recommended she attempt to wear regular shoes as well as participate in an aggressive physical therapy program, all in the hope of resolving her complaints and returning her to work.

Dr. Horton released claimant to light duty on April 16, 2001.<sup>5</sup> He remained unconvinced that claimant had RSD based on her presentation. He believed she was suffering from chronic neuritic pain. He also suspected an irritated tibial nerve or tarsal tunnel syndrome. On May 10, 2001, claimant was returned to modified duty with restrictions. Then, on June 4, 2001, Dr. Horton released her to full duty with permanent restrictions that compelled respondent to provide a padded mat for the concrete floor and allow claimant to alternate sitting and standing with no more than 2 hours of continuous standing.

Claimant left respondent's employ on June 19, 2001, as she testified they were not following her restrictions. She then left the country again in February 2002 to tend to a family emergency. Since returning, she has made some effort to locate employment. She does "stand by" driving for a local dealership that pays approximately \$100 per month. She also babysits for her daughter in exchange for payment of some ongoing household expenses.

During the course of this claim, Dr. Horton was asked to assign a rating. He concluded claimant had a 17 percent functional impairment to her left ankle (for the nerve

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<sup>2</sup> *Id.*, Ex. 1 at 2 (Dr. Kumar's notes).

<sup>3</sup> Horton's Depo., Ex. 2 at 15 (November 30, 2000 IME).

<sup>4</sup> R.H. Trans. at 14.

<sup>5</sup> Claimant left the country in December 2000 to tend to her son. This explains the gap in treatment.

damage and neuritic pain), along with permanent restrictions which required her to alternate her standing and sitting and to avoid standing more than 2 hours at a time. Dr. Horton admitted he did not treat or rate the right foot.<sup>6</sup>

At her counsel's request claimant was evaluated by Dr. Sergio Delgado. Dr. Delgado confirmed that claimant suffered a stress fracture in her left foot. He went on to diagnose bilateral Morton's neuroma and concluded that claimant's daily work on her feet was the competent cause of the neuromas as well as the added stress of favoring one foot over the other while on crutches.<sup>7</sup> Dr. Delgado assigned an 8 percent whole body impairment for the bilateral Morton's neuroma.<sup>8</sup>

After reviewing both physician's testimony, the ALJ elected to adopt the opinions of Dr. Delgado, viewing them to be "more compelling"<sup>9</sup> and awarded claimant 8 percent impairment to the body as a whole thereby acknowledging the bilateral nature of claimant's injury and resulting impairment. The Board has considered the record as a whole and believes the ALJ's findings are reasonable. The medical records and testimony show that claimant sustained a stress fracture to her left foot and was placed on crutches. At that point, her weight was transferred to her right foot. Although she might not have been working during this period of time, she began to experience symptoms in her right foot while walking on crutches. She expressed these complaints to the physical therapist and then to Dr. Horton.

It is well settled that when a primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from the injury is compensable if it is a direct and natural result of the primary injury.<sup>10</sup> In this instance, the Board is persuaded that claimant has sustained her burden of proving she suffered a bilateral foot injury in the course of her employment. While the initial injury manifested in her left lower extremity, the use of the crutches affected her right lower extremity and the resulting symptoms are compensable under Kansas law. Accordingly, the ALJ's finding as to an 8 percent whole body impairment for the bilateral lower extremity injury will not be disturbed.

Turning to the related issue of work disability, claimant's counsel indicated he had no serious objection to the ALJ's imputation of an post injury average weekly wage of

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<sup>6</sup> Horton Depo. at 16 and 19.

<sup>7</sup> Delgado Depo. at 8 and 12.

<sup>8</sup> *Id.*, Ex. 2 at 6 (December 4, 2001 rating report).

<sup>9</sup> ALJ Award (Nov. 21, 2003) at 3.

<sup>10</sup> See e.g. *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

\$250, nor did either party argue the task loss analysis was erroneous. Accordingly, the Board finds those factual findings should be affirmed as well.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bryce D. Benedict dated November 21, 2003, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of May, 2004.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant  
Michelle Daum Haskins, Attorney for Respondent and its Insurance Carrier  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director